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OFFICE OF PETITIONS

In re Application of :  
Hamilton et al. :  
Application Number: 09/985880 :  
Filing Date: 11/06/2001 :  
Attorney Docket Number: :  
003636.0131 :  
:

ON PETITION

This is a decision in reference to the "PETITION TO WITHDRAW ERRONEOUS HOLDING OF ABANDONMENT," filed on October 19, 2007.

The petition is **DISMISSED**.

The application became abandoned on August 6, 2006, for failure to timely file a response to the non-final Office action mailed on May 5, 2006, which set a three (3)-month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on January 26, 2007.

Petitioners asserts the holding of abandonment should be withdrawn because the Office action mailed on May 5, 2006, was sent to an old correspondence address. Specifically, petitioners assert that a revocation and new power of attorney were filed prior to the mailing of the final Office action, but that the Office incorrectly sent the final Office action to the old address. Petitioner notes that the Office action Office action mailed on May 5, 2006, was returned as undeliverable on May 16, 2006.

A review of the record reveals that Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address was filed on February 21, 2006, requesting the correspondence address be changed to: Manelli Denison & Selter, PLLC, Attn: William H. Bollman, 2000 M Street, NW, Suite 700, Washington, DC 20016. The paper filed on February 21, 2006, is signed by Bruce White, and states that it is signed on behalf of the assignee of record of the entire interest, and that a statement under 37 CFR 3.73(b) is enclosed. However, a review of the papers received on February 21, 2006, reveals that no statement under 37 CFR 3.73(b) was filed with the Revocation and Power of Attorney filed on February 21, 2006.

37 CFR 3.71 states, in pertinent part:

Prosecution by assignee.

(a) Patents — conducting of prosecution. One or more assignees as defined in paragraph (b) of this section may, after becoming of record pursuant to paragraph (c) of this section, conduct prosecution of a national patent application or a reexamination proceeding to the exclusion of either the inventive entity, or the assignee(s) previously entitled to conduct prosecution.

.....

(c) Patents — Becoming of record. **An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.**

(emphasis added)

37 CFR 3.73(b) states:

(1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:

(i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment). For trademark matters only, the documents submitted to establish ownership may be required to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office. For patent matters only, the submission of the documentary evidence must be accompanied by a statement affirming that the documentary evidence of the chain of title from the

original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or

(ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

(2) The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:

(i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or

(ii) Being signed by a person having apparent authority to sign on behalf of the assignee, e.g., an officer of the assignee.

As the showing of record is that no statement under 37 CFR 3.73(b) statement was filed, the assignee did not establish itself as of record. Therefore, the revocation and power of attorney was not proper and could not have been entered, and did not operate as a proper change of correspondence address.

As such, the Office did not err in mailing the non-final Office action mailed on May 5, 2006, to the current address of record of: Ashok K. Mannava, 281 Murtha Street, Alexandria, VA 22304.

Although the USPTO attempts to notify parties as to defective papers in order to permit timely refiling, it has no obligation to do so.<sup>1</sup> Rather, it is the applicants who are ultimately responsible for filing proper documents.<sup>2</sup> That there was a delay in advising applicants that the revocation and power of attorney filed on February 21, 2006, did not include the required statement under 37 CFR 3.73(b) is regretted, but, as noted above, part of applicants' assumed risk.

A review of the record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action

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<sup>1</sup> See In re Colombo Inc., 33 USPQ2d 1530, 1532. (Comm'r Pat. 1994).

<sup>2</sup> Id.

was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.<sup>3</sup> The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g. if the practitioner has a history of not receiving Office actions).

As such, the showing of record is that petitioner did not timely file a proper change of correspondence address, and that the Office action mailed on May 5, 2006, was not received because petitioner failed to timely file a proper change of correspondence address.

Furthermore MPEP 707.13 states,

#### Returned Office Action

Office actions are sometimes returned to the Office because the United States Postal Service has not been able to deliver them. Upon receipt of the returned Office action, the Technology Center (TC) technical support staff will check the application file record to ensure that the Office action was mailed to the correct correspondence address. If the Office action was not mailed to the correct correspondence address, it should be stamped "remailed" with the remailing date and mailed to the correct correspondence address. The period running against the application begins with the date of remailing. If the Office action was mailed to the correct correspondence address and it was addressed to an attorney or agent, a letter may be written to the inventor or assignee informing him or her of the returned action. The period running against the application begins with the date of remailing. Ex parte

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<sup>3</sup> M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Gourtoff, 1924 C.D. 153, 329 O.G. 536 (Comm'r Pat. 1924).

As such, the showing of record is that the Office did in fact mail the Office action to the address of record. Rather, a current correspondence address was not provided because the revocation and power of attorney and change of correspondence address did not establish the right of the assignee to take action, and was therefore not acceptable.

The failure to file a proper change of correspondence address is an avoidable mistake. Withdrawal of the holding of abandonment is not warranted when an applicant makes an avoidable mistake.

As such, the failure to receive the Office action is the fault of petitioner and not that of the Office. As such, the petition to withdraw the holding of abandonment is dismissed.

It is noted that the Revocation of Power of Attorney New New Power of Attorney and Change of Correspondence Address filed on February 21, 2006, states that a Statement Under 37 CFR 3.73(b) is enclosed. As such, if petitioners can provide evidence that the Statement Under 37 CFR 3.73(b) was timely filed, with the revocation and power of attorney filed on February 21, 2006, petitioners may wish to consider filing a renewed petition to withdraw the holding of abandonment based on the fact that a proper revocation and power of attorney were filed on February 21, 2006.

Alternatively, petitioner may wish to consider filing a petition under 37 CFR 1.137(b), accompanied by the proper fee.

A grantable petition under 37 CFR 1.137(b) must be accompanied by a proper reply to the outstanding Office action. As such, a copy of the Office action mailed on May 5, 2006, is enclosed for petitioner's assistance in preparing a reply. The reply must be submitted with the petition under 37 CFR 1.137(b). A copy of the petition form for filing a petition under 37 CFR 1.137(b) is also enclosed. Petitioner should note that the fee for filing a petition under 37 CFR 1.137(b) (small entity) is currently \$770.00.

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision.

The address in the petition is different from the correspondence address. A courtesy copy of this decision is being mailed to the

address in the petition. All future correspondence, however, will be mailed solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX: (571) 273-8300  
Attn: Office of Petitions

By hand: Customer Service Window  
Mail Stop Petition  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

*D. Wood*  
Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Form PTO/SB/64  
Office Action of May 5, 2006  
Privacy Act Statement

Cc: MANELLI, DENISON & SELTER PLLC  
2000 M STREET, NW 7<sup>TH</sup> FLOOR  
WASHINGTON DC 20036-3307



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/985,880	11/06/2001	Andrew Hamilton	003636.0131	4508
7590	05/05/2006		EXAMINER	
ASHOK K. MANNAVA 281 MURTHA STREET ALEXANDRIA, VA 22304			VO, TED T	
			ART UNIT	PAPER NUMBER
			2191	

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/985,880	HAMILTON ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Ted T. Vo	2191

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.135(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 02 December 2005.  
2a)  This action is FINAL. 2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 4-12, 16-24 and 28-36 is/are allowed.

6)  Claim(s) 1-3, 13-15 and 25-27 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the application for a list of the certified copies not specified.

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

**DETAILED ACTION**

1. This action is in response to the amendment filed on 12/02/2005 entered by filing RCE on 02/21/06.

Claims 4-12,16-24 and 28-36 stand allowed.

Claims 1-36 remain pending in the application.

***Response to Amendment***

2. Applicants' amendment and arguments have been fully considered.

Regard to Applicant's arguments as pointing to MPEP 2131 and quotes of particularly case laws.

Examiner recognized that Applicants' pointing is improper. In this reply, Applicants fail to point out the novelty presenting in the claims. The claims do not direct toward a particularly function, but merely recites many terms that can cover many aspects of the arts. Given typical examples:

"application" could be any executable file in a computer;

"run-time engine" can be read by a processor, by an operating system such as Windows, or a development toolkit, etc;

"Go method" can be read by a button click in any popup windows;

"Screen definition" is read by default setup of any image seen in computer Windows or of the Windows itself.

It should be noted that it is not necessary for a reference to document a feature that is already seen or included, common and known to a skilled artisan. Vie versa, it is not necessary for a patent application to document a well-known feature (e.g., *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379-80, 231 USPQ 81, 90 (Fed. Cir. 1986).

A typical application must conform to screen definition (seen in a standard windows such as resize/zoom) because it is necessary, and not need to be described by a skilled artisan.

As per Applications' mention in remarks p. 16: 1-6, Applicants clearly preempt the standard properties of "screen definition". As being already discussed, a typical application embedded, or within a Microsoft Windows can be resized and zoom (run-time). This feature must conform to or comply with a standard size of a computer screen, provided at compiled time before it becomes a run-time application. This could not be new in the art as seen in a CE Window toolkit (presenting in this action) where the CE Window toolkit shows property windows and allows screen definition parameters to be entered in the compiled time.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 13-15, 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Microsoft Corporation (hereinafter: Microsoft) "Microsoft Windows CE Toolkit for Visual Basic 6.0 Guided Tour", MSDN Library, 7-1999.

Given the broadest reasonable interpretation of followed claims in light of the specification.

As per Claim 1: Microsoft discloses,

*"A method for executing application programs, comprising:  
receiving at least one application program in a handheld mobile wireless client device (Windows CE is installed and run in a handheld client device. For example, see Figure 5, shows an application name "Project1" created by Visual basic and run in a Handheld PC Pro as a default Device);  
activating said at least one application program in said handheld mobile wireless client device (It should be noted that "Project1" is only a default name; User who creates the "Project1" can rename this*

application properly (e.g. "NorthwindCustomerInformation"). See Figure 14, a toolkit that provides an application is registered in the file system of a "client device" such as Handheld PC Pro, so that when the "project1" can be carried under this toolkit. See page 4, "Starting the Windows CE project");

*instantiating a run-time engine in said handheld mobile wireless client device* (See Figure 14, it includes "run", "debug", i.e. "project1" (of Figure 5) can be run or debug by a run-time engine of the Handheld PC Pro); and

*executing said at least one application program by said run-time engine in said handheld mobile wireless client device to create screen definitions with said at least one application program at run-time as if said screen definitions has been defined at compile time* (See Figure 14, it provides a run engine "run" or "debug" as in the manner of compilation when a "new project" completely coded; moreover, the Toolkit included with "Setting the Project Properties" (See page 4) provides screen definition setting).

As per Claim 2: Microsoft discloses,

*registering said at least one application program with an operating system of said handheld mobile wireless client device; (Figure 14 includes "File" menu. "File" menu is known as a common feature associated with an operating system of the device and used in standard Microsoft Windows (Windows is also an operating system), where programs/files/applications/ are registered in a hierarchical structure.*

An example to illustrate for registering is seen in Figures 1-2, or Figure 15);

*and displaying an icon configured to represent said at least one application program in response to said registration* (This is referred as screen of the client device implemented with windows CE – See icons within/under "Name" in Figures 1-2).

As per Claim 3:

*A method for executing application programs, comprising:*

*receiving at least one application program in a client device* (For example, and application is located in "File" menu which might be downloaded from network, or created by a the toolkit. As seen page 4, "Starting the Windows CE Project", provides an Application program selected from "File" menu, or see Figure 5, "Project1, All Figures 16, 17, 18, represent "Application" already/within developed in the client device);

*activating said at least one application program* (Figure 14 provides activating an application);  
*instantiating a run-time engine* (Figure 14 includes a run-time engine "Run", or "Debug" menu);  
*executing said at least one application program by said run-time engine* (A project/application created within Figure 14 can be executed by "Run" or "Debug" menu);  
*registering a process identification corresponding to said activated said at least one application program* (It is clearly that a project/application selected from "File" menu will be registered under this run/debug process); and  
*executing a GO method by said run-time engine* (It is clearly that if a user select the "Run" menu, the predicated/registered project/application will be run under this engine. A typical example, if a user run the application and see an error, he can select "debug" menu which provide "Go" to run the program for debugging purpose).

As per Claims 13-14: The rejection of these claims is in the same reason as in Claims 1-2. See rationale addressed in Claims 1-2 above. It should be noted that a typical client device such as Handheld PC pro is constructed comprises at least a memory and a processor because of standardization of a computing device.

As per Claim 15: The rejection of the claim is in the same reason as in Claim 3. See rationale addressed in Claim 3. It should be noted that a typical client device such as Handheld PC pro is constructed comprises at least a memory and a processor because of standardization of a computing device.

As per Claims 25-26: The rejection of these claims is in the same reason as in Claims 1-2. See rationale addressed in Claims 1-2 above. It should be noted that a typical client device such as Handheld PC pro is constructed comprises at least a readable storage medium because of standardization of a computing device.

As per Claim 27: The rejection of the claim is in the same reason as in Claim 3. See rationale addressed in Claim 3. It should be noted that a typical client device such as Handheld PC pro is constructed comprises at least a readable storage medium because of standardization of a computing device.

***Allowable Subject Matter***

**5. Allowable subject matter of Claims 4-12,16-24 and 28-36**

Claims 4-12,16-24 and 28-36 are allowed because the independent Claims of these Claims are rewritten in independent form including all of the limitations of the base claim and any intervening claims in accordance to Allowable subject matter in the prior action.

***Conclusion***

**6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708.**

The facsimile number for the organization where this application or proceeding is assigned is the Central Facsimile number **571-273-8300**.

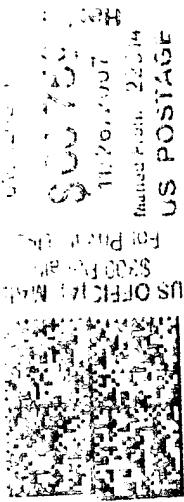
Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR System, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ted T. Vo  
Primary Examiner  
Art Unit 2191  
April 28, 2006

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